

# MINTZ LEVIN

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August 12, 2009

## BY ECF FILING

The Honorable William E. Smith  
United States District Court for the District of Rhode Island  
One Exchange Terrace  
Federal Building and Courthouse  
Providence, RI 02903

Re: *Uniloc USA et al. v. Microsoft Corporation*  
Civil Action No.: 03-cv-440 (WES)

Dear Judge Smith:

We write on behalf of the plaintiffs to bring to the Court's attention a recent decision on post-trial motions by Judge Leonard Davis of the United States District Court for the Eastern District of Texas in *i4i Limited Partnership, et al. v. Microsoft Corporation*.

Submitted herewith as Exhibits A - C, respectively, are Judge Davis' MEMORANDUM OPINION AND ORDER on post-trial motions, PERMANENT INJUNCTION, and FINAL JUDGMENT, all dated August 11, 2009.

Plaintiffs submit that Judge Davis' opinion is relevant to the post-trial motions herein as it addresses and rejects numerous arguments made by Microsoft in this case, including Microsoft's arguments that:

(1) its infringement was not willful because it initially prevailed on summary judgment and asserted numerous defenses to plaintiffs' infringement claim (Ex. A, pp. 15-18);

(2) Microsoft should not have to prove invalidity by clear and convincing evidence with respect to prior art that was not before the patent examiner (*id.* at pp. 29-30);

(3) use of the 25% "rule of thumb" in determining patent damages is improper (*id.* at pp. 36-37); and

(4) plaintiff's damages expert's reasonableness check was a back-door attempt to argue an Entire Market Value theory of royalties (*id.* at p. 37).

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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Further, Judge Davis enhanced the jury's \$200 million damages award by \$40 million based, *inter alia*, upon the conduct of Microsoft's counsel during trial, Microsoft's knowledge of the asserted patent, and Microsoft's lack of any opinion that the patent-in-suit was not infringed or was invalid. Ex. A, pp. 7, 39-44.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dean Bostock", written in a cursive, stylized script.

Dean G. Bostock